

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
) ✓
 v.) CR NO. 04-30032-MAP
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FRANCIS G. KEOUGH III, ET AL)

ORDER RE: PENDING MOTIONS

December 11, 2006

PONSOR, D.J.

On December 11, 2006, the court heard argument on various motions pending in this case. Based on counsel's remarks, the court orders as follows:

1. Defendant Hallahan's Motion to Sever (Dkt. No. 116). This motion is hereby DENIED. This defendant will be pleading guilty and will be withdrawing this motion.
2. Motion of Defendants Keough and Guzman to Sever (Dkt. No. 134). This motion is hereby DENIED. Defendant Guzman will be pleading guilty, so this motion is moot.
3. Defendant Keough's Motion to Sever Counts 27, 28 and 31-45 (Dkt. No. 127). This motion is hereby DENIED. The court denied the motion as regards Counts 31-45 at hearing, and took the motion with regard to Counts 27 and 28 under advisement. Upon reflection, the court has concluded that adequate jury instructions will eliminate or greatly reduce any potential prejudice to Defendant resulting from a joint trial of these counts and other charges

against Defendant. The court will insure that any unfairly inflammatory details regarding these charges will not be offered by the government.

4. Defendant Keough's Motion to Sever Counts 46-50 (Dkt. No. 137). This motion is hereby DENIED, without prejudice to a motion for reconsideration supported by a detailed affidavit providing a precise proffer as to what testimony Defendant would give at a separate trial regarding these counts.

5. Defendant Keough's Motion to Dismiss Counts 34, 35, 37, 39 41 & 43 (Dkt. No. 119). This motion is hereby DENIED. The Government will be providing Defendant with the names of the witnesses at issue. The court will also limit the government to the specific investigation and grand jury proceeding related to this Defendant. The specificity of these proceedings is clearly inferable from the indictment.

6. Defendant Keough's Motion to Dismiss Count 29 (Dkt. No. 121). This motion is hereby DENIED. Further development of the facts underlying the count will be necessary before the court can rule. This ruling is without prejudice to reconsideration at the conclusion of the government's case.

7. Defendant Keough's Motion to Dismiss Count 1 (Dkt. No. 124). This motion is hereby DENIED. The argument raised fact issues that can be addressed at trial and through jury instructions. Dismissal of Count 1 based upon the arguments offered by Defendant would be premature at this point.

8. Defendant Keough's Motion to Dismiss Indictment Due to Pre-Indictment Delay (Dkt. No. 136). This motion is hereby DENIED. The fourteen-month delay at issue is not especially lengthy. Defendant has failed to show either substantial prejudice or improper intent on the part of the government.

9. Defendant Keough's Motion to Strike (Dkt. No. 133). This motion is hereby DENIED. The jury in this case will not be given a copy of the indictment, and Defendant will suffer no prejudice from any language contained in it.

The court has this day issued a Scheduling Order regarding motions in limine and a status conference preparatory to commencement of trial on March 5, 2007.

It is So Ordered.

A handwritten signature in cursive script, reading "Michael A. Ponsor", written in black ink. The signature is fluid and stylized, with the first and last names being more prominent.

MICHAEL A. PONSOR
United States District Judge